

REMARKS

Claims 1 and 3-18 are currently pending in this application. Claims 8, 9 and 13 have been amended. No claims have been canceled or amended with this response. Claims 1 and 3-18 remain in the application.

The objections to claims 8, 9 and 13 have been addressed by the present amendment.

Claims 1, 6-14, 17 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles (U.S. Patent No. 3,049,729) in view of Poole (UK Patent Application No. 2 172 198 A).

Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Saputo et al. (U.S. Patent No. 4,734,946).

Claim 4 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Saputo et al. and further in view of Bellows et al. (U.S. Patent No. 6,557,191).

Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Saputo et al. and further in view of Bellows et al. and further in view of Wallace et al. (U.S. Patent No. 2,687,537).

Claims 15 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view Stephens (U.S. Patent No. 1,866,953).

Rejections under 35 U.S.C. §103(a)

Broyles discloses a bed construction with a rigid foundation that can be readily produced by, for example, molding and with can have structural features that accommodate, for example, infolded portions of bedclothing. Broyles also discloses that the foundation can be produced in a “knock-down” state for easier packaging and transport. The foundation can be a homogeneous structure which may incorporate a pigment within the resin to obviate coloration subsequent to manufacture. As admitted in the Office Action, Broyles fails to teach or suggest that an outer surface of the sidewall includes three dimensional architectural features formed therein, wherein the architectural features mimic a pattern and tactile feel substantially comparable to quilted surface of a companion mattress, as recited in claims 1, 10 and 11.

The Office Action then cites Poole as disclosing a bed frame for a water filled mattress, wherein the frame keeps the mattress in a regular shape whilst providing for the attachment of decorative panels. Poole's bed frame has substantially open sides, and the decorative panels are intended to cover the open sides. The panels can also be altered according to individual taste.

Applicant submits that the Action fails to point out and Applicant fails to find a suggestion or motivation in either Broyles or Poole to combine the references. Broyles does not suggest any unresolved challenges with regard to functionality of the sidewalls. In fact, Broyles suggests that the sidewalls include certain structural features that accommodate, for example, infolded portions of bedclothing. Applying a decorative panel over Broyles' sidewalls would in fact negate the advantageous explicitly stated by Broyles. Although Broyles suggests incorporating pigments in the resin, there is no suggestion in Broyles to form any pattern, except for the structural features, on the sidewalls. Poole does not apply the decorative panels to a mattress foundation, but to a frame that encloses a (water) mattress.

Although, the statement on page 3 of the Office Action asserting that, "A skilled artisan would have found it obvious to provide the mattress assembly of Broyles with a mattress foundation having at least one sidewall outer surface with three-dimensional architectural features formed therein" may or may not have been the motivation driving the inventors in the instant case, the only potential teaching for any such motivation is Applicant's own patent application. Using Applicant's own invention to supply the motivation for combining references is inappropriate. As stated in MPEP §2143.01, "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." In re Mills, 916 F.2d 680, 16 USPQ 1430 (Fed. Cir. 1990). As that section further states, "Although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so.' " In re Mills, 916 F.2d at 682. See also In re Fritch, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992).

Accordingly, there is no real motivation to combine Poole with Broyles. And US patent law does require a real and genuine motivation to combine the references. Such a motivation lacks here. In fact, Broyles suggests that bedclothing will cover the sidewalls which would obscure any decoration formed on the sidewalls. And Poole gives no thought to adding anything

to a bed foundation, disclosing instead a bed frame. Combining these references is improper hindsight, and withdrawal of the rejection of claims 1, 10, and 11 over the combination of Broyles and Poole is respectfully requested.

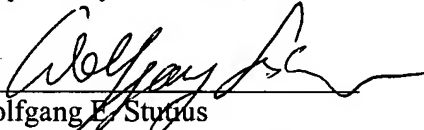
Claims 3-9 depend from claim 1, and claims 12-18 depend from claim 11. The Saputo et al., Bellows et al., Wallace et al. and Stephens patents cited against these claims in combination with the Broyles and Poole patents fail to disclose the features of claims 1 and 11, and also do not provide a motivation for combining Broyles and Poole, as applied to claims 1, 10, and 11.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

We believe that we have appropriately provided for fees due in connection with this submission. However, if there are any other fees due in connection with the filing of this Response, please charge our Deposit Account No. 18-1945, under Order No. SMCY-P03-085 from which the undersigned is authorized to draw.

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Respectfully submitted,

By 
Wolfgang E. Stutius

Registration No.: 40,256
ROPES & GRAY LLP
One International Place
Boston, Massachusetts 02110-2624
(617) 951-7000
(617) 951-7050 (Fax)
Attorneys/Agents For Applicant